

Assembly Bill No. 2667

CHAPTER 888

An act to amend Section 68511.3 of the Government Code, relating to courts.

[Approved by Governor September 24, 1996. Filed
with Secretary of State September 25, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2667, Davis. Indigent litigants.

Existing law directs the Judicial Council to formulate and adopt uniform forms and rules of court for litigants proceeding in forma pauperis. Existing law requires that these rules provide that permission to proceed in forma pauperis be granted to litigants who declare under penalty of perjury that they are receiving specified federal benefits or that their monthly income is 125% or less of the current monthly poverty line annually established by the Secretary of Health and Human Services, as specified, and who submit a financial statement in support of the averment, or in other instances in the court's discretion, as specified. Existing law also requires that the forms and rules shall provide for the disclosure of the current address and the date of birth of the litigant.

Existing law further provides that at any time within 3 years after the court has granted a litigant permission to proceed in forma pauperis, the clerk of the court, county financial officer, or other appropriate county officer may notify the court of any changed financial circumstances which may enable the litigant to pay all or a portion of the fees and costs which had been waived. Existing law provides that the court may authorize the clerk of the court, county financial officer, or other appropriate county officer to require the litigant to appear before and be examined by the court, no more than once in any 4-month period. The court may then order the litigant to pay to the county an amount the court believes is compatible with the litigant's financial ability, as specified.

Existing law also authorizes the clerk of the court to dispose of applications for in forma pauperis status 3 years after the date of filing without the need for microfilming, or to dispose of applications immediately upon their being microfilmed.

This bill would revise those provisions to require that applicants for permission to proceed in forma pauperis who are receiving specified federal benefits declare under penalty of perjury that they are receiving those benefits and to authorize these applicants to voluntarily provide their social security number for verification purposes. The bill would authorize the court to require an applicant

who chooses not to disclose his or her social security number to attach documentation to the application to support that claim, except as provided. Applicants whose monthly income is 125% or less of the current monthly poverty line, as specified, or who apply for permission to proceed in forma pauperis to be granted in the court's discretion, would be required to file a financial statement under oath on a form promulgated by the Judicial Council.

The bill would also require that the forms and rules adopted by the Judicial Council provide for the disclosure of additional information about the litigant, including the litigant's occupation and employer and the address and value of any real property owned directly or beneficially by the litigant. The bill would authorize a review of the financial status of the litigant at any time prior to final disposition of the case, rather than at any time within 3 years, after the court has granted a litigant permission to proceed in forma pauperis, as specified. The bill would require a litigant proceeding in forma pauperis to notify the court within 5 days of any settlement or monetary consideration received in settlement of the litigation and of any other change in financial circumstances affecting the litigant's ability to pay court fees and costs.

The bill would delete the provision authorizing the clerk of the court to dispose of applications for in forma pauperis status 3 years after the date of filing without the need for microfilming, or to dispose of applications immediately upon their being microfilmed.

By imposing new duties on court clerks, the bill would impose a state-mandated local program.

This bill would incorporate additional changes in Section 68511.3 of the Government Code proposed by AB 2563, to be operative only if AB 2563 and this bill are both chaptered and become effective on January 1, 1997, and this bill is chaptered last.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 68511.3 of the Government Code is amended to read:

68511.3. (a) The Judicial Council shall formulate and adopt uniform forms and rules of court for litigants proceeding in forma pauperis. These rules shall provide: (1) for standard procedures for considering and determining applications for permission to proceed in forma pauperis, including, in the event of a denial of such permission, a written statement detailing the reasons for denial and an evidentiary hearing where there is a substantial evidentiary conflict; (2) for standard procedures to toll relevant time limitations when a pleading or other paper accompanied by such an application is timely lodged with the court and delay is caused due to the processing of the application to proceed in forma pauperis; (3) for proceeding in forma pauperis at every stage of the proceedings at both the appellate and trial levels of the court system; (4) for the confidentiality of the financial information provided to the court by these litigants; (5) that the court may authorize the clerk of the court, county financial officer, or other appropriate county officer to make reasonable efforts to verify the litigant's financial condition without compromising the confidentiality of the application; and (6) that permission to proceed in forma pauperis be granted (A) to litigants who are receiving benefits pursuant to the Supplemental Security Income (SSI) and State Supplemental Payments (SSP) programs (Sections 12200–12205 of the Welfare and Institutions Code), the Aid to Families with Dependent Children (AFDC) program (42 U.S.C. Sec. 601 et seq.), the Food Stamp program (7 U.S.C. Sec. 2011 et seq.) or Section 17000 of the Welfare and Institutions Code, (B) to litigants whose monthly income is 125 percent or less of the current monthly poverty line annually established by the Secretary of Health and Human Services pursuant to the Omnibus Budget Reconciliation Act of 1981, as amended, and (C) to other persons when in the court's discretion, such permission is appropriate because the litigant is unable to proceed without using money which is necessary for the use of the litigant or the litigant's family to provide for the common necessities of life.

(b) (1) Litigants who apply for permission to proceed in forma pauperis pursuant to subparagraph (A) of paragraph (6) of subdivision (a) shall declare under penalty of perjury that they are receiving such benefits and may voluntarily provide the court with their social security number to permit the court to verify the applicant's receipt of public assistance. The court may require any applicant, except a defendant in an unlawful detainer action, who chooses not to disclose his or her social security number for verification purposes to attach to the application documentation of benefits to support the claim and all other financial information on a form promulgated by the Judicial Council for this purpose.

(2) Litigants who apply for permission to proceed in forma pauperis pursuant to subparagraph (B) or (C) of paragraph (6) of subdivision (a) shall file a financial statement under oath on a form



promulgated by, and pursuant to rules adopted by, the Judicial Council.

(c) The forms and rules adopted by the Judicial Council shall provide for the disclosure of the following information about the litigant:

- (1) Current street address.
- (2) Date of birth.
- (3) Occupation and employer.
- (4) Monthly income and expenses.
- (5) Address and value of any real property owned directly or beneficially.
- (6) Personal property with a value that exceeds five hundred dollars (\$500).

The information furnished by the litigant shall be used by the court in determining his or her ability to pay all or a portion of the fees and costs.

(d) At any time after the court has granted a litigant permission to proceed in forma pauperis and prior to final disposition of the case, the clerk of the court, county financial officer, or other appropriate county officer may notify the court of any changed financial circumstances which may enable the litigant to pay all or a portion of the fees and costs which had been waived. The court may authorize the clerk of the court, county financial officer, or other appropriate county officer to require the litigant to appear before and be examined by the person authorized to ascertain the validity of their indigent status; provided, that no litigant shall be required to appear more than once in any four-month period. A litigant proceeding in forma pauperis shall notify the court within five days of any settlement or monetary consideration received in settlement of this litigation and of any other change in financial circumstances that affects the litigant's ability to pay court fees and costs. After the litigant either (1) appears before and is examined by the person authorized to ascertain the validity of his or her indigent status or (2) notifies the court of a change in financial circumstances, the court may then order the litigant to pay to the county such sum and in such manner as the court believes is compatible with the litigant's financial ability.

In any action or proceeding in which the litigant whose fees and costs have been waived would have been entitled to recover those fees and costs from another party to the action or proceeding had they been paid, the court may assess the amount of the waived fees and costs against the other party and order the other party to pay that sum to the county or to the clerk and serving and levying officers respectively, or the court may order the amount of the waived fees and costs added to the judgment and so identified by the clerk.

Execution may be issued on any order provided for in this subdivision in the same manner as on a judgment in a civil action.

When an amount equal to the sum due and payable to the clerk has been collected upon the judgment, these amounts shall be remitted to the clerk within 30 days. Thereafter, when an amount equal to the sum due to the serving and levying officers has been collected upon the judgment, these amounts shall be due and payable to those officers and shall be remitted within 30 days. If the remittance is not received by the clerk within 30 days or there is a filing of a partial satisfaction of judgment in an amount at least equal to the fees and costs payable to the clerk or a satisfaction of judgment has been filed, notwithstanding any other provision of law, the court may issue an abstract of judgment, writ of execution, or both for recovery of those sums, plus the fees for issuance and execution and an additional fee for administering this section. The county board of supervisors shall establish a fee, not to exceed actual costs of administering this subdivision and in no case exceeding twenty-five dollars (\$25), which shall be added to the writ of execution.

SEC. 1.5. Section 68511.3 of the Government Code is amended to read:

68511.3. (a) The Judicial Council shall formulate and adopt uniform forms and rules of court for litigants proceeding in forma pauperis. These rules shall provide for all of the following:

(1) Standard procedures for considering and determining applications for permission to proceed in forma pauperis, including, in the event of a denial of such permission, a written statement detailing the reasons for denial and an evidentiary hearing where there is a substantial evidentiary conflict.

(2) Standard procedures to toll relevant time limitations when a pleading or other paper accompanied by such an application is timely lodged with the court and delay is caused due to the processing of the application to proceed in forma pauperis.

(3) Proceeding in forma pauperis at every stage of the proceedings at both the appellate and trial levels of the court system.

(4) The confidentiality of the financial information provided to the court by these litigants.

(5) That the court may authorize the clerk of the court, county financial officer, or other appropriate county officer to make reasonable efforts to verify the litigant's financial condition without compromising the confidentiality of the application.

(6) That permission to proceed in forma pauperis be granted to all of the following:

(A) Litigants who are receiving benefits pursuant to the Supplemental Security Income (SSI) and State Supplemental Payments (SSP) programs (Sections 12200–12205 of the Welfare and Institutions Code), the Aid to Families with Dependent Children (AFDC) program (42 U.S.C. Sec. 601 et seq.), the Food Stamp program (7 U.S.C. Sec. 2011 et seq.), or Section 17000 of the Welfare and Institutions Code.

(B) Litigants whose monthly income is 125 percent or less of the current monthly poverty line annually established by the Secretary of Health and Human Services pursuant to the Omnibus Budget Reconciliation Act of 1981, as amended.

(C) Other persons when in the court's discretion, this permission is appropriate because the litigant is unable to proceed without using money which is necessary for the use of the litigant or the litigant's family to provide for the common necessities of life.

(b) (1) Litigants who apply for permission to proceed in forma pauperis pursuant to subparagraph (A) of paragraph (6) of subdivision (a) shall declare under penalty of perjury that they are receiving such benefits and may voluntarily provide the court with their social security number to permit the court to verify the applicant's receipt of public assistance. The court may require any applicant, except a defendant in an unlawful detainer action, who chooses not to disclose his or her social security number for verification purposes to attach to the application documentation of benefits to support the claim and all other financial information on a form promulgated by the Judicial Council for this purpose.

(2) Litigants who apply for permission to proceed in forma pauperis pursuant to subparagraph (B) or (C) of paragraph (6) of subdivision (a) shall file a financial statement under oath on a form promulgated by, and pursuant to rules adopted by, the Judicial Council.

(c) The forms and rules adopted by the Judicial Council shall provide for the disclosure of the following information about the litigant:

- (1) Current street address.
- (2) Date of birth.
- (3) Occupation and employer.
- (4) Monthly income and expenses.
- (5) Address and value of any real property owned directly or beneficially.
- (6) Personal property with a value that exceeds five hundred dollars (\$500).

The information furnished by the litigant shall be used by the court in determining his or her ability to pay all or a portion of the fees and costs.

(d) At any time after the court has granted a litigant permission to proceed in forma pauperis and prior to final disposition of the case, the clerk of the court, county financial officer, or other appropriate county officer may notify the court of any changed financial circumstances which may enable the litigant to pay all or a portion of the fees and costs which had been waived. The court may authorize the clerk of the court, county financial officer, or other appropriate county officer to require the litigant to appear before and be examined by the person authorized to ascertain the validity of their

indigent status. However, no litigant shall be required to appear more than once in any four-month period. A litigant proceeding in forma pauperis shall notify the court within five days of any settlement or monetary consideration received in settlement of this litigation and of any other change in financial circumstances that affects the litigant's ability to pay court fees and costs. After the litigant either (1) appears before and is examined by the person authorized to ascertain the validity of his or her indigent status or (2) notifies the court of a change in financial circumstances, the court may then order the litigant to pay to the county such sum and in such manner as the court believes is compatible with the litigant's financial ability.

In any action or proceeding in which the litigant whose fees and costs have been waived would have been entitled to recover those fees and costs from another party to the action or proceeding had they been paid, the court may assess the amount of the waived fees and costs against the other party and order the other party to pay that sum to the county or to the clerk and serving and levying officers respectively, or the court may order the amount of the waived fees and costs added to the judgment and so identified by the clerk.

Execution may be issued on any order provided for in this subdivision in the same manner as on a judgment in a civil action. When an amount equal to the sum due and payable to the clerk has been collected upon the judgment, these amounts shall be remitted to the clerk within 30 days. Thereafter, when an amount equal to the sum due to the serving and levying officers has been collected upon the judgment, these amounts shall be due and payable to those officers and shall be remitted within 30 days. If the remittance is not received by the clerk within 30 days or there is a filing of a partial satisfaction of judgment in an amount at least equal to the fees and costs payable to the clerk or a satisfaction of judgment has been filed, notwithstanding any other provision of law, the court may issue an abstract of judgment, writ of execution, or both for recovery of those sums, plus the fees for issuance and execution and an additional fee for administering this section. The county board of supervisors shall establish a fee, not to exceed actual costs of administering this subdivision and in no case exceeding twenty-five dollars (\$25), which shall be added to the writ of execution.

(e) Notwithstanding subdivision (a), a person who is sentenced to imprisonment in a state prison or confined in a county jail and, during the period of imprisonment or confinement, files a civil action or notice of appeal of a civil action in forma pauperis shall be required to pay the full amount of the filing fee to the extent provided in this subdivision.

(1) In addition to the form required by this section for filing in forma pauperis, an inmate shall file a copy of a statement of account for any sums due to the inmate for the six-month period immediately



preceding the filing of the civil action or notice of appeal of a civil action. This copy shall be certified by the appropriate official of the Department of Corrections.

(2) Upon filing the civil action or notice of appeal of a civil action, the court shall assess, and when funds exist, collect, as a partial payment of any required court fees, an initial partial filing fee of 20 percent of the greater of one of the following:

(A) The average monthly deposits to the inmate's account.

(B) The average monthly balance in the inmate's account for the six-month period immediately preceding the filing of the civil action or notice of appeal.

(3) After payment of the initial partial filing fee, the inmate shall be required to make monthly payments of 20 percent of the preceding month's income credited to the inmate's account. The Department of Corrections shall forward payments from this account to the clerk of the court each time the amount in the account exceeds ten dollars (\$10) until the filing fees are paid.

(4) In no event shall the filing fee collected pursuant to this subdivision exceed the amount of fees permitted by law for the commencement of a civil action or an appeal of a civil action.

(5) In no event shall an inmate be prohibited from bringing a civil action or appeal of a civil action solely because the inmate has no assets and no means to pay the initial partial filing fee.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 68511.3 of the Government Code proposed by both this bill and AB 2563. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 68511.3 of the Government Code, and (3) this bill is enacted after AB 2563, in which case Section 1 of this bill shall not become operative.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.